

Exhibit R

Buto, Kathleen - Vol. II
Washington, DC

September 13, 2007

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL) MDL NO. 1456
INDUSTRY AVERAGE WHOLESALE) CIVIL ACTION
PRICE LITIGATION) 01-CV-12257-PBS
THIS DOCUMENT RELATES TO)
U.S. ex rel. Ven-a-Care of) Judge Patti B.
the Florida Keys, Inc.) Saris
v.) Chief Magistrate
Abbott Laboratories, Inc.,) Judge Marianne B.
No. 06-CV-11337-PBS) Bowler
- - - - -

(captions continue on following pages)

Videotaped deposition of Kathleen Buto

Volume II

Washington, D.C.

Thursday, September 13, 2007

9:00 a.m.

Henderson Legal Services
202-220-4158

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1 December 13th 1997.
 2 I'd ask that you review the fourth
 3 paragraph and then the final paragraph carrying
 4 over to the next page of this document to see if
 5 it refreshes your recollection at all regarding
 6 whether you proposed legislation on this issue.
 7 A. (Reading) Yes. I do remember. We
 8 developed the proposal. I just wasn't sure
 9 whether it actually got sent to Congress. I
 10 couldn't remember that.
 11 Q. Do you recall who was involved in
 12 developing the proposal?
 13 A. It was a group within HCFA. So the
 14 office of legislation and policy. And that
 15 likely included people like Bernie Patashnik --
 16 I'm sorry. Bernie Patashnik may have been
 17 involved. But Ira Virney as well as the staff of
 18 the bureau of policy development under
 19 Bernadette's division dealt with drug
 20 reimbursement.
 21 Q. So if there were proposed legislation
 22 that was developed by HCFA it would involve both

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1 the office of legislation and the bureau of
 2 policy development?
 3 A. That's correct. And in this case we
 4 may even have involved the regional offices
 5 because of their involvement and understanding of
 6 what was going on in real practice in some of the
 7 surveys that we've looked at such as the one from
 8 Dallas. So we may have involved -- once in a
 9 while the regional offices would get involved if
 10 there was actual practice that was relevant to
 11 the proposal.
 12 Q. Do you recall what happened with HCFA's
 13 proposal?
 14 A. It didn't pass.
 15 Q. Was HCFA upset that it didn't pass?
 16 MR. DRAYCOTT: Objection. You can
 17 answer.
 18 Q. Were you upset that it didn't pass?
 19 A. I was upset that it didn't pass. I was
 20 upset, you know, just over time that we couldn't
 21 -- frustrated I guess is a better way to put it -
 22 - that we couldn't get this change made.

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1 Q. And what was stopping HCFA from getting
 2 this change made?
 3 A. In this case Congress didn't pass it.
 4 Q. HCFA was well aware of the fact that
 5 published prices -- AWP in this case -- were not
 6 a reliable indicator of acquisition cost,
 7 correct?
 8 MR. DRAYCOTT: Objection. You can
 9 answer.
 10 A. HCFA had repeatedly tried to move away
 11 from the published AWP's to a better method of
 12 computing actual acquisition costs. So we were
 13 aware that AWP was not a good basis.
 14 Q. And in your personal view what stopped
 15 HCFA from succeeded in that effort?
 16 MR. DRAYCOTT: Objection. You can
 17 answer.
 18 A. It was probably two or three things.
 19 Politics, so a lot of concern on the part of
 20 physician groups, particularly oncologists, that,
 21 you know, they preferred the current AWP-based
 22 system for a number of reasons, didn't want to go

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1 to the burdensome and intrusive practice of
 2 having their acquisition cost collected by the
 3 agency. The lack of -- except for the OIG
 4 studies, the lack of good data that the agency
 5 could bring forward to show the extent. And
 6 concern broadly across a variety of groups that a
 7 change would impede access to important
 8 treatment.
 9 So it was a number of things and --
 10 there's also an underlying concern of government
 11 getting into much more regulated pricing. And
 12 this would be a first step toward doing that.
 13 MR. TORBORG: Ms. Buto, I have no
 14 further questions. I do reserve the right to
 15 question you again should we get some documents
 16 from you that were previously withheld in
 17 privilege or they have not been produced. Thank
 18 you very much for your time.
 19 THE WITNESS: Thank you.
 20 MR. TORBORG: We'll go off the record.
 21 THE VIDEOGRAPHER: Off the record at
 22 11:09.

23 (Pages 360 to 363)